S.B.Cr.Misc. Petition No.1748/2007

(Bindra Singh Vs. State of Rajasthan)

Date of Order :: December 05, 2007

HON'BLE MR. H.R.PANWAR,J.

Mr.Hemant Dutt, for the petitioner.
Mr.Ashok Upadhyaya, P.P. for the State.

By the instant criminal misc. petition under section 482 Cr.P.C., the petitioner has challenged the order dt. 10.10.2006 passed by the Chief Judicial Magistrate, Hanumangarh (for short `the trial court' hereinafter) in Cr. Case No.922/2006 arising out of FIR No.280/2006, Police Station, Tibbi, Distt. Hanumangarh.

I have heard learned counsel for the parties. Perused the order impugned.

It is contended by the learned counsel for the petitioner that 1050 Ltrs. of diesel in five different drums and a cane was seized by the police on the ground that the diesel in excess of 1000 Ltrs. permissible by a notification of the State Government dt. 11.4.2005 was possessed by the petitioner and three others. A proceeding under section 6(A) of the Essential Commodities

Act was initiated before the District Collector, Hanumangarh in Misc. Case No.119/2006 and vide order dt. 22.11.2006. The diesel in question was confiscated. However, the District Collector noticed that by the notification issued by the State Government dt. 11.4.2005, permissible limit to possess the diesel is 1000 Ltrs. and the diesel in question was 1050 Ltrs. possessed by four different persons viz. Gurdeep Singh, Nakshatra Singh, Jogendra Singh and Tej Singh and the petitioner Bindra Singh was said to be the driver of the vehicle in which the diesel was transported. The petitioner has placed on record the cash memo issued by Asakhera Filling Station, Distributor of Indian Oil Corporation, dt. 22.9.2006 in the name of different persons i.e. Gurdeep Singh, Nakshatra Singh, Jogendra Singh and Tej Singh. These four persons were also travelling along with diesel in a loading taxi owned by the petitioner. According to the learned counsel, there were four persons named above, who were in possession of the respective diesel and none of them was in possession over 1000 Ltrs. of diesel as is evident from the bill. The bill shows 50 Ltrs., 430, 215 and 220 Ltrs. respectively. Thus, the diesel possessed by each of the persons was within the permissible limit of 1000 Ltrs. as provided by the notification issued by the State Government dt. 11.4.2005 and the persons, who were in possession of the diesel were agriculturists. The petitioner being

transporter cannot be said to be in possession of the diesel.

Keeping in view the decision of the District Collector and the fact that 1050 Ltrs. of diesel was possessed by four persons in different drums, it cannot be said that there is a violation of the notification dt. 11.4.2005. In the circumstances, therefore, in my view, the court below fell in error in taking cognizance of the offence. Prima facie, from the material available, no offence is made out and, therefore, the order taking cognizance deserves to be set aside.

Consequently, the petition is allowed. Order of the trial court taking cognizance dt. 10.10.2006 qua present petitioner is set aside. Proceedings against the petitioner stands quashed.

[H.R.PANWAR],J.

m.asif/-

S.B.Cr.Misc. Stay Petition No.1355/2007
In
S.B.Cr.Misc. Petition No.1748/2007

(Bindra Singh Vs. State of Rajasthan)

Date of Order :: December 05, 2007

HON'BLE MR. H.R.PANWAR,J.

Mr.Hemant Dutt, for the petitioner.
Mr.Ashok Upadhyaya, P.P. for the State.

Since the main petition has been allowed. Stay petition stands disposed of.

[H.R.PANWAR],J.

m.asif/-